

Part 5

Preliminary Action

63A-14-501 Title.

This part is known as "Preliminary Action."

Enacted by Chapter 426, 2013 General Session

63A-14-502 Initial review of ethics complaint -- Notice.

- (1) Within five business days after the day on which the commission receives a complaint, the staff of the commission, in consultation with the chair, shall examine the complaint to determine if it is in compliance with Sections 63A-14-302 and 63A-14-402.
- (2) If the chair determines that the complaint does not comply with Sections 63A-14-302 and 63A-14-402, the chair shall:
 - (a) return the complaint to the first complainant named on the complaint with:
 - (i) a description of the reason for the noncompliance; and
 - (ii) a copy of the applicable provisions of law; and
 - (b) without disclosing the identity of the respondent, notify the other members of the commission that a complaint was filed against an executive branch elected official, but that the complaint was returned for noncompliance with the requirements of this chapter.
- (3) Each member of the commission and the commission's staff shall keep confidential the fact that a complaint was filed and returned until the commission submits the annual summary data report described in Section 63A-14-203.
- (4) If a complaint is returned for noncompliance with the requirements of this chapter, the complainants may file another complaint if the new complaint independently meets the requirements of Sections 63A-14-302 and 63A-14-402, including any requirements for timely filing.
- (5) If the chair determines that a complaint complies with the requirements of this chapter, the chair shall:
 - (a) accept the complaint;
 - (b) notify the members of the commission that:
 - (i) a complaint has been filed against an executive branch elected official; and
 - (ii) the chair has accepted the complaint; and
 - (c) within five business days after the day on which the commission receives the complaint, forward the complaint to the respondent via personal delivery or a delivery method that provides verification of receipt, and include with the complaint notice of the respondent's deadline for filing a response to the complaint.
- (6)
 - (a) The identity of the respondent and the allegations raised in a complaint are confidential pending the commission's review of the complaint.
 - (b) The fact that a complaint was filed is confidential until the commission publicly discloses the existence of the complaint by:
 - (i) issuing a finding that an allegation in the complaint has merit; or
 - (ii) submitting the annual summary data report described in Section 63A-14-203.

Enacted by Chapter 426, 2013 General Session

63A-14-503 Meeting of the commission for review of complaint -- Procedures.

- (1) No later than 10 days after the day on which a complaint is accepted under Section 63A-14-502, the chair shall:
 - (a) except as provided in Subsection (2), schedule a commission meeting on a date:
 - (i) no later than 60 days after the day on which the chair accepts the complaint; and
 - (ii) no earlier than 40 days after the day on which the chair accepts the complaint;
 - (b) place the complaint on the agenda for consideration at that meeting;
 - (c) provide notice of the date, time, and location of the meeting to:
 - (i) the members of the commission;
 - (ii) the first complainant named in the complaint; and
 - (iii) the respondent; and
 - (d) provide a copy of the complaint to each member of the commission.
- (2) The commission may, by majority vote, change the date of the meeting for review of the complaint in order to accommodate:
 - (a) a meeting described in Subsection 63A-14-602(2); or
 - (b) necessary scheduling requirements.
- (3) The commission may conduct a vote to change the date of the meeting described in Subsection (2) by phone or electronic means if the members do not discuss any other matters relating to the complaint during the communication.

Enacted by Chapter 426, 2013 General Session

63A-14-504 Response to ethics complaint -- Filing -- Form.

- (1) A respondent shall file a response to a complaint with the commission no later than 20 days after the day on which the respondent receives delivery of the complaint.
- (2) A respondent shall ensure that the response is in writing and contains the following information:
 - (a) the name, address, and telephone number of the respondent;
 - (b) for each alleged violation in the complaint:
 - (i) each affirmative defense asserted in response to the allegation, including a general description of each affirmative defense and the facts and circumstances supporting the defense, supported by one or more affidavits, each of which shall comply with the format described in Subsection (3); and
 - (ii) the facts and circumstances refuting the allegation, which shall be provided by:
 - (A) copies of official records or documentary evidence; or
 - (B) one or more affidavits, each of which shall comply with the format described in Subsection (3);
 - (c) a list of the witnesses that the respondent desires to call, including for each witness:
 - (i) the name, address, and, if available, telephone number of the witness;
 - (ii) a brief summary of the testimony to be provided by the witness; and
 - (iii) a specific description of any documents or evidence that the respondent desires the witness to produce;
 - (d) a statement that the respondent:
 - (i) has reviewed the allegations contained in the complaint and the sworn statements and documents attached to the response; and
 - (ii) believes the contents of the response to be true and accurate; and
 - (e) the signature of the respondent.
- (3) An affidavit described in Subsection (2)(b) shall include:
 - (a) the name, address, and telephone number of the affiant;

- (b) a statement that the affiant has actual knowledge of the facts and circumstances alleged in the affidavit;
 - (c) the facts and circumstances testified to by the affiant;
 - (d) a statement that the affidavit is believed to be true and correct and that false statements are subject to penalties for perjury; and
 - (e) the signature of the affiant.
- (4) Within five business days after the day on which the commission receives the response, the commission shall provide copies of the response to:
- (a) each member of the commission; and
 - (b) the first named complainant on the complaint.

Enacted by Chapter 426, 2013 General Session